

SENATE BILL No. 262

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-8-31; IC 34-30-2-116.9.

Synopsis: Interstate insurance compact. Provides for an interstate insurance product regulation compact.

Effective: July 1, 2003.

Paul

January 9, 2003, read first time and referred to Committee on Insurance and Financial Institutions.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 262

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-8-31 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 31. Interstate Insurance Product Regulation Compact**

5 **Sec. 1. The purposes of this compact are, through means of joint**
6 **and cooperative action among the compacting states, to:**

7 **(1) promote and protect the interest of consumers of**
8 **individual and group annuity, life insurance, disability**
9 **income, and long term care insurance products;**

10 **(2) develop uniform standards for insurance products covered**
11 **under the compact;**

12 **(3) establish a central clearinghouse to receive and provide**
13 **prompt review of insurance products covered under the**
14 **compact and, in certain cases, advertisements related thereto,**
15 **submitted by insurers authorized to do business in one (1) or**
16 **more compacting states;**

17 **(4) give appropriate regulatory approval to product filings**



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and advertisements satisfying the applicable uniform standard;

(5) improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;

(6) create the interstate insurance product regulation commission; and

(7) perform these and any other related functions as may be consistent with the state regulation of the business of insurance.

Sec. 2. (a) The definitions in this section apply throughout this chapter.

(b) "Advertisement" means material designed to create public interest in a product or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

(c) "Bylaws" mean bylaws established by the commission for the governance, direction, or control of the commission.

(d) "Commission" refers to the interstate insurance product regulation commission established by section 3 of this chapter.

(e) "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

(f) "Compacting state" means a state that:

(1) has enacted this compact; and

(2) has not:

(A) withdrawn as provided in section 15 of this chapter; or

(B) been terminated as provided in section 16 of this chapter.

(g) "Defaulting state" means a compacting state that defaults, as described in section 16 of this chapter.

(h) "Domiciliary state" means the state in which an insurer is incorporated or organized, or the state of entry of an alien insurer.

(i) "Insurer" means an entity licensed by a state to issue contracts of insurance for the lines of insurance covered by this chapter.

(j) "Member" means the commissioner or the commissioner's designee.

(k) "NAIC" refers to the National Association of Insurance Commissioners.

(l) "Non-compacting state" means a state that is not a

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1 compacting state.

2 (m) "Operating procedures" mean procedures adopted by the
3 commission to implement a rule, a uniform standard, or a
4 provision of this compact.

5 (n) "Opt out" means any action by a compacting state to decline
6 to adopt or participate in a promulgated uniform standard.

7 (o) "Product" means the form of a policy or contract, including
8 an application, an endorsement, or a related form that is attached
9 to and made a part of the policy or contract, and any evidence of
10 coverage or certificate, for an individual or group annuity, life
11 insurance, disability income, or long term care insurance product
12 that an insurer is authorized to issue in Indiana or another
13 compacting state.

14 (p) "Rule" means a statement of general or particular
15 applicability and future effect adopted by the commission,
16 including a uniform standard developed under section 8 of this
17 chapter, that is designed to implement, interpret, or prescribe law
18 or policy or that describes the organization, procedure, or practice
19 requirements of the commission, which shall have the force and
20 effect of law in the compacting states.

21 (q) "State" means a state, district, or territory of the United
22 States.

23 (r) "Third-party filer" means an entity that submits a product
24 filing to the commission on behalf of an insurer.

25 (s) "Uniform standard" means a standard adopted by the
26 commission for a product line under section 8 of this chapter. The
27 term includes all the product requirements in aggregate. However:

28 (1) each uniform standard shall be construed, whether express
29 or implied, to prohibit the use of any inconsistent, misleading,
30 or ambiguous provisions in a product; and

31 (2) the form of the product made available to the public shall
32 not be unfair, inequitable, or against public policy as
33 determined by the commission.

34 (t) "Withdrawing state" means a compacting state that
35 withdraws from the compact under section 15 of this chapter.

36 Sec. 3. (a) The compacting states hereby establish an entity
37 known as the interstate insurance product regulation commission.
38 Under section 4 of this chapter, the commission may:

39 (1) develop uniform standards for product lines;

40 (2) receive and provide prompt review of products filed with
41 the commission; and

42 (3) give approval to product filings satisfying applicable



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uniform standards;
 however, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. This chapter does not prohibit an insurer from filing the insurer's product in a state where the insurer is licensed to conduct the business of insurance and any such filing is subject to the laws of the state where filed.

(b) The commission is a corporate body comprising each compacting state.

(c) The commission is a nonprofit entity, separate and distinct from the individual compacting states.

(d) The commission is solely responsible for the commission's liabilities except as otherwise specifically provided in this compact.

(e) Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively in a court with jurisdiction where the principal office of the commission is located.

Sec. 4. The commission has the following powers:

(1) To adopt rules, under section 8 of this chapter, which have the force and effect of law and are binding in the compacting states to the extent and in the manner provided in this compact.

(2) To exercise the commission's rule making authority and establish reasonable uniform standards for products covered under the compact and advertisement related to the products, which have the force and effect of law and are binding in the compacting states, but only for those products filed with the commission. However, that a compacting state has the right to opt out of the uniform standard under section 8(d) of this chapter, to the extent and in the manner provided in this compact, and any uniform standard established by the commission for long term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the NAIC's long term care insurance model act and long term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the NAIC long term care insurance model act or long term care insurance model regulation adopted by the NAIC require amending the uniform standards established by the commission for long term care insurance products.

(3) To receive and review in an expeditious manner products filed with the commission, rate filings for disability income

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1 and long term care insurance products, and give approval of
2 those products and rate filings that satisfy the applicable
3 uniform standard, where the approval has the force and effect
4 of law and be binding on the compacting states to the extent
5 and in the manner provided in the compact.

6 (4) To receive and review in an expeditious manner
7 advertisement relating to long term care insurance products
8 for which uniform standards have been adopted by the
9 commission, and give approval to all advertisement that
10 satisfies the applicable uniform standard. For any product
11 covered under this compact, other than long term care
12 insurance products, the commission has authority to require
13 an insurer to submit all or any part of the insurer's
14 advertisement with respect to that product for review or
15 approval prior to use, if the commission determines that the
16 nature of the product is such that an advertisement of the
17 product could have the capacity or tendency to mislead the
18 public. The actions of the commission as provided in this
19 section have the force and effect of law and are binding in the
20 compacting states to the extent and in the manner provided in
21 the compact.

22 (5) To exercise the commission's rule making authority and
23 designate products and advertisement that may be subject to
24 a self-certification process without the need for prior
25 approval by the commission.

26 (6) To adopt operating procedures under section 8 of this
27 chapter, which are binding in the compacting states to the
28 extent and in the manner provided in this compact.

29 (7) To bring and prosecute legal proceedings or actions in the
30 commission's name as the commission, provided that the
31 standing of any state insurance department to sue or be sued
32 under applicable law shall not be affected.

33 (8) To issue subpoenas requiring the attendance and
34 testimony of witnesses and the production of evidence.

35 (9) To establish and maintain offices.

36 (10) To purchase and maintain insurance and bonds.

37 (11) To borrow, accept, or contract for services of personnel,
38 including employees of a compacting state.

39 (12) To hire employees, professionals, or specialists, elect or
40 appoint officers, and fix their compensation, define their
41 duties, give them appropriate authority to carry out the
42 purposes of the compact, determine their qualifications, and

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1 establish the commission's personnel policies and programs
 2 relating to, among other things, conflicts of interest, rates of
 3 compensation, and qualifications of personnel.

4 (13) To accept any and all appropriate donations and grants
 5 of money, equipment, supplies, materials, and services, and to
 6 receive, use, and dispose of the same. At all times the
 7 commission shall strive to avoid any appearance of
 8 impropriety.

9 (14) To lease, purchase, accept appropriate gifts or donations
 10 of, or otherwise to own, hold, improve, or use any property,
 11 real, personal, or mixed. At all times the commission shall
 12 strive to avoid any appearance of impropriety.

13 (15) To sell, convey, mortgage, pledge, lease, exchange,
 14 abandon, or otherwise dispose of any property, real, personal,
 15 or mixed.

16 (16) To remit filing fees to compacting states as may be set
 17 forth in the bylaws, rules, or operating procedures.

18 (17) To enforce compliance by compacting states with rules,
 19 uniform standards, operating procedures, and bylaws.

20 (18) To provide for dispute resolution among compacting
 21 states.

22 (19) To advise compacting states on issues relating to insurers
 23 domiciled or doing business in non-compacting jurisdictions,
 24 consistent with the purposes of this compact.

25 (20) To provide advice and training to those personnel in state
 26 insurance departments responsible for product review, and to
 27 be a resource for state insurance departments.

28 (21) To establish a budget and make expenditures.

29 (22) To borrow money.

30 (23) To appoint committees, including advisory committees,
 31 comprising members, state insurance regulators, state
 32 legislators or their representatives, insurance industry and
 33 consumer representatives, and any other interested persons
 34 as may be designated in the bylaws.

35 (24) To provide and receive information from and to
 36 cooperate with law enforcement agencies.

37 (25) To adopt and use a corporate seal.

38 (26) To perform any other functions as may be necessary or
 39 appropriate to achieve the purposes of this compact consistent
 40 with the state regulation of the business of insurance.

41 Sec. 5. (a) Each compacting state shall have and be limited to
 42 one (1) member. Each member shall be qualified to serve in that

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capacity under applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state where the vacancy exists. Nothing in this section shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of the compacting state's commissioner.

(b) Each member shall be entitled to one (1) vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision in this chapter to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless two-thirds (2/3) of the members vote in favor of adoption.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern the commission's conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including the following:

- (1) Establishing the fiscal year of the commission.
- (2) Providing reasonable procedures for appointing and electing members and holding meetings of the management committee.
- (3) Providing reasonable standards and procedures:
 - (A) for the establishment of other committees; and
 - (B) governing any general or specific delegation of any authority or function of the commission.
- (4) Providing reasonable procedures for calling and conducting meetings of the commission and ensuring reasonable notice of each meeting.
- (5) Establishing the titles, duties, authority, and reasonable procedures for the election of the officers of the commission.
- (6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.
- (7) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and reserving of all the commission's debts



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and obligations.

Sec. 6. (a) A management committee comprising not more than fourteen (14) members shall be established as follows:

(1) One (1) member from each of the six (6) compacting states with the largest premium volume for individual and group annuities, life, disability income, and long term care insurance products, determined from the records of the NAIC for the prior year.

(2) Four (4) members from those compacting states with at least two percent (2%) of the market based on the premium volume described in subdivision (1), other than the six (6) compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws.

(3) Four (4) members from those compacting states with less than two percent (2%) of the market, based on the premium volume described in subdivision (1), with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the bylaws.

(b) The management committee has the authority and duties as may be set forth in the bylaws, including the following:

(1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission.

(2) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard. However, a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds (2/3) of the members of the management committee.

(3) Overseeing the offices of the commission.

(4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the commission.

(c) The commission shall annually elect officers from the management committee, with each having the authority and duties as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for the

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1 period, upon the terms and conditions and for the compensation as
 2 the commission considers appropriate. The executive director shall
 3 serve as secretary to the commission but may not be a member of
 4 the commission. The executive director shall hire and supervise
 5 any other staff as may be authorized by the commission.

6 (e) A legislative committee comprised of state legislators or state
 7 legislators' designees shall be established to monitor the operations
 8 of and make recommendations to the commission, including the
 9 management committee. However, the manner of selection and
 10 term of any legislative committee member shall be as set forth in
 11 the bylaws. Before the commission adopts any uniform standard,
 12 revision to the bylaws, annual budget, or other significant matter
 13 as may be provided in the bylaws, the management committee shall
 14 consult with and report to the legislative committee. The
 15 commission may establish additional advisory committees as the
 16 commission's bylaws may provide for the carrying out of the
 17 commission's functions.

18 (f) The commission shall maintain the commission's corporate
 19 books and records in accordance with the bylaws.

20 (g) The members, officers, executive director, employees, and
 21 representatives of the commission are immune from suit and
 22 liability, either personally or in their official capacity, for any
 23 claim for damage to or loss of property or personal injury or other
 24 civil liability caused by or arising out of any actual or alleged act,
 25 error, or omission that occurred, or that the person against whom
 26 the claim is made had a reasonable basis for believing occurred,
 27 within the scope of commission employment, duties, or
 28 responsibilities. However, nothing in this subsection shall be
 29 construed to protect any person from suit or liability for any
 30 damage, loss, injury, or liability caused by the intentional or willful
 31 and wanton misconduct of the person.

32 (h) The commission shall defend any member, officer, executive
 33 director, employee, or representative of the commission in any civil
 34 action seeking to impose liability arising out of any actual or
 35 alleged act, error, or omission that occurred within the scope of
 36 commission employment, duties, or responsibilities, or that the
 37 person against whom the claim is made had a reasonable basis for
 38 believing occurred within the scope of commission employment,
 39 duties, or responsibilities. However:

- 40 (1) nothing in this subsection shall be construed to prohibit
- 41 that person from retaining the person's own counsel; and
- 42 (2) this subsection applies only if the actual or alleged act,

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error, or omission did not result from the person's intentional or willful and wanton misconduct.

(i) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against the person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subsection applies only if the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

Sec. 7. (a) The commission shall meet and take any actions as are consistent with this compact and the bylaws.

(b) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(c) The commission shall meet at least one (1) time during each calendar year. Additional meetings shall be held as set forth in the bylaws.

Sec. 8. (a) The commission shall adopt reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. However, if the commission exercises the commission's rulemaking authority in a manner that is beyond the scope of the purposes of this chapter or the powers granted in this chapter, the action by the commission is invalid and has no force and effect.

(b) Rules and operating procedures shall be made according to a rulemaking process that substantially conforms to the principles of the model state administrative procedure act, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of the commission's intention to adopt the uniform standard.

(c) A uniform standard becomes effective ninety (90) days after the uniform standard's adoption by the commission or on a later date as the commission may determine. However, a compacting

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1 state may opt out of a uniform standard as provided in subsection
 2 (d). All other rules and operating procedures and amendments to
 3 the other rules and operating procedures become effective as of the
 4 date specified in each rule, operating procedure, or amendment.

5 (d) A compacting state may opt out of a uniform standard,
 6 either by legislation or by rule adopted by the insurance
 7 department under the compacting state's administrative procedure
 8 act. If a compacting state elects to opt out of a uniform standard by
 9 rule, the compacting state must:

10 (1) give written notice to the commission not later than ten
 11 (10) business days after the uniform standard is adopted or at
 12 the time the state becomes a compacting state; and

13 (2) find that the uniform standard does not provide
 14 reasonable protections to the citizens of the state, given the
 15 conditions in the state. The commissioner shall make specific
 16 findings of fact and conclusions of law, based on a
 17 preponderance of the evidence, detailing the conditions in the
 18 state that warrant a departure from the uniform standard
 19 and determining that the uniform standard would not
 20 reasonably protect the citizens of the state. The commissioner
 21 must balance, consider, and find that the conditions in the
 22 state and needs of the citizens of the state outweigh the
 23 following factors:

24 (A) The intent of the legislature to participate in, and the
 25 benefits of, an interstate agreement to establish national
 26 uniform consumer protections for the products subject to
 27 this chapter.

28 (B) The presumption that a uniform standard adopted by
 29 the commission provides reasonable protections to
 30 consumers of the relevant product.

31 However, a compacting state may, at the time of the compacting
 32 state's enactment of this compact, prospectively opt out of all
 33 uniform standards involving long term care insurance products by
 34 expressly providing for an opt out in the enacted compact, and the
 35 opt out shall not be treated as a material variance in the offer or
 36 acceptance of any state to participate in this compact. The opt out
 37 is effective at the time of enactment of this compact by the
 38 compacting state and shall apply to all existing uniform standards
 39 involving long term care insurance products and those
 40 subsequently adopted.

41 (e) If a compacting state elects to opt out of a uniform standard,
 42 the uniform standard remains applicable in the compacting state

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1 electing to opt out until the time the opt out legislation is enacted
 2 into law or the regulation opting out becomes effective. Once the
 3 opt out of a uniform standard by a compacting state becomes
 4 effective as provided under the laws of the state, the uniform
 5 standard has no further force and effect in the state unless and
 6 until the legislation or regulation implementing the opt out is
 7 repealed or otherwise becomes ineffective under the laws of the
 8 state. If a compacting state opts out of a uniform standard after the
 9 uniform standard has been made effective in the state, the opt out
 10 shall have the same prospective effect as provided under section 15
 11 of this chapter for withdrawals.

12 (f) If a compacting state has formally initiated the process of
 13 opting out of a uniform standard by rule while the regulatory opt
 14 out is pending, the compacting state may petition the commission,
 15 not less than fifteen (15) days before the effective date of the
 16 uniform standard, to stay the effectiveness of the uniform standard
 17 in the compacting state. The commission may grant a stay if the
 18 commission determines the regulatory opt out is being pursued in
 19 a reasonable manner and there is a likelihood of success. If a stay
 20 is granted or extended by the commission, the stay or extension
 21 may postpone the effective date by not more than ninety (90) days,
 22 unless the stay is extended by the commission. However, a stay may
 23 not be permitted to remain in effect for more than one (1) year
 24 unless the compacting state can show extraordinary circumstances
 25 that warrant a continuance of the stay, including the existence of
 26 a legal challenge that prevents the compacting state from opting
 27 out. A stay may be terminated by the commission on notice that the
 28 rulemaking process has been terminated.

29 (g) Not later than thirty (30) days after a rule or operating
 30 procedure is adopted, any person may file a petition for judicial
 31 review of the rule or operating procedure. However, the filing of a
 32 petition shall not stay or otherwise prevent the rule or operating
 33 procedure from becoming effective unless the court finds that the
 34 petitioner has a substantial likelihood of success. The court shall
 35 give deference to the actions of the commission consistent with
 36 applicable law and shall not find the rule or operating procedure
 37 to be unlawful if the rule or operating procedure represents a
 38 reasonable exercise of the commission's authority.

39 Sec. 9. (a) The commission shall adopt rules to establish
 40 conditions and procedures under which the commission shall make
 41 the commission's information and official records available to the
 42 public for inspection or copying. The commission may adopt

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1 additional rules under which the commission may make available
 2 to federal and state agencies, including law enforcement agencies,
 3 records and information otherwise exempt from disclosure, and
 4 may enter into agreements with these agencies to receive or
 5 exchange information or records subject to nondisclosure and
 6 confidentiality provisions.

7 (b) Except as to privileged records, data, and information, the
 8 laws of any compacting state pertaining to confidentiality or
 9 nondisclosure shall not relieve any compacting state commissioner
 10 of the duty to disclose any relevant records, data, or information
 11 to the commission. However, disclosure to the commission shall not
 12 be considered to waive or otherwise affect any confidentiality
 13 requirement, and, except as otherwise expressly provided in this
 14 chapter, the commission shall not be subject to the compacting
 15 state's laws pertaining to confidentiality and nondisclosure with
 16 respect to records, data, and information in the commission's
 17 possession. Confidential information of the commission remains
 18 confidential after the information is provided to any commissioner.

19 (c) The commission shall monitor compacting states for
 20 compliance with duly adopted bylaws, rules, including uniform
 21 standards, and operating procedures. The commission shall notify
 22 any noncomplying compacting state in writing of the noncomplying
 23 compacting state's noncompliance with commission bylaws, rules,
 24 or operating procedures. If a noncomplying compacting state fails
 25 to remedy the noncomplying compacting state's noncompliance
 26 within the time specified in the notice of noncompliance, the
 27 compacting state is considered to be in default as set forth in
 28 section 16 of this chapter.

29 (d) The commissioner of any state in which an insurer is
 30 authorized to do business or is conducting the business of insurance
 31 shall continue to exercise the commissioner's authority to oversee
 32 the market regulation of the activities of the insurer in accordance
 33 with the provisions of the state's law. The commissioner's
 34 enforcement of compliance with the compact is governed by the
 35 following:

36 (1) With respect to the commissioner's market regulation of
 37 a product or advertisement that is approved or certified to the
 38 commission, no activity of an insurer constitutes a violation of
 39 the provisions, standards, or requirements of the compact
 40 except upon a final order of the commission, issued at the
 41 request of a commissioner after prior notice to the insurer
 42 and an opportunity for hearing before the commission.

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(2) Before a commissioner may bring an action for violation of a provision, standard, or requirement of the compact related to the use of an advertisement not approved or certified to the commission, the commission or an authorized commission officer or employee must authorize the action. However, authorization under this subdivision does not require:

- (A) notice to the insurer;
- (B) opportunity for hearing; or
- (C) disclosure of:
 - (i) requests for authorization; or
 - (ii) records of the commission's action on a request described in item (i).

Sec. 10. The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and that may arise between two (2) or more compacting states, or between compacting states and non-compacting states, and the commission shall adopt an operating procedure providing for resolution of any disputes.

Sec. 11. (a) Insurers and third party filers seeking to have a product approved by the commission shall file the product with and pay applicable filing fees to the commission. Nothing in this chapter restricts or otherwise prevents an insurer from filing the insurer's product with the insurance department in any state where the insurer is licensed to conduct the business of insurance, and the filing is subject to the laws of the states where filed.

(b) The commission shall establish appropriate filing and review processes and procedures under commission rules and operating procedures. Notwithstanding any provision in this chapter to the contrary, the commission shall adopt rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing any rules, the commission shall consider the interests of the public in having access to the information as well as protection of personal medical and financial information and trade secrets that may be contained in a product filing or supporting information.

(c) Any product approved by the commission may be sold or otherwise issued in the compacting states in which the insurer is legally authorized to do business.

Sec. 12. (a) Not later than thirty (30) days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third party filer whose filing

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1 was disapproved may appeal the determination to a review panel
 2 appointed by the commission. The commission shall adopt rules to
 3 establish procedures for appointing the review panels and provide
 4 for notice and hearing. The decision of the review panel shall be the
 5 final action of the commission and is not subject to review by any
 6 court. However, an allegation that the commission, in disapproving
 7 a product or advertisement filed with the commission, acted
 8 arbitrarily, capriciously, or in a manner that is an abuse of
 9 discretion or otherwise not in accordance with the law, is subject
 10 to judicial review in accordance with section 3(e) of this chapter.

11 (b) The commission may monitor, review, and reconsider
 12 products and advertisement subsequent to their filing or approval
 13 upon a finding that the product does not meet the relevant uniform
 14 standard. If appropriate, the commission may withdraw or modify
 15 the commission's approval after proper notice and hearing, subject
 16 to the appeal process in subsection (a).

17 Sec. 13. (a) The commission shall pay or provide for the
 18 payment of the reasonable expenses of the commission's
 19 establishment and organization. To fund the cost of the
 20 commission's initial operations, the commission may accept
 21 contributions and other forms of funding from the NAIC,
 22 compacting states, and other sources. Contributions and other
 23 forms of funding from other sources shall be of such a nature that
 24 the independence of the commission concerning the performance
 25 of the commission's duties is not compromised.

26 (b) The commission shall collect a filing fee from each insurer
 27 and third party filer filing a product with the commission to cover
 28 the cost of the operations and activities of the commission and the
 29 commission's staff in an amount sufficient to cover the
 30 commission's annual budget.

31 (c) The commission's budget for a fiscal year may not be
 32 approved until the commission's budget has been subject to notice
 33 and comment as set forth in section 8(b) of this chapter.

34 (d) The commission is exempt from all taxation in and by the
 35 compacting states.

36 (e) The commission shall not pledge the credit of any
 37 compacting state, except by and with the appropriate legal
 38 authority of that compacting state.

39 (f) The commission shall keep complete and accurate accounts
 40 of all the commission's internal receipts, including grants and
 41 donations, and disbursements of all funds under the commission's
 42 control. The internal financial accounts of the commission are

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1 subject to the accounting procedures established under the
 2 commission's bylaws. The financial accounts and reports, including
 3 the system of internal controls and procedures of the commission,
 4 shall be audited annually by an independent certified public
 5 accountant. Upon the determination of the commission, but not less
 6 frequently than every three (3) years, the review of the independent
 7 auditor shall include a management and performance audit of the
 8 commission. The commission shall make an annual report, to the
 9 governor and legislature of the compacting states, including a
 10 report of the independent audit. The commission's internal
 11 accounts, any work papers related to any internal audit, and any
 12 work papers related to the independent audit are confidential.
 13 However, these materials may be shared with the commissioner of
 14 any compacting state and shall remain confidential under section
 15 9 of this chapter.

16 (g) No compacting state shall have any claim to or ownership of
 17 any property held by or vested in the commission or to any
 18 commission funds held under the provisions of this compact.

19 Sec. 14. (a) Any state is eligible to become a compacting state.
 20 The compact becomes effective and binding upon legislative
 21 enactment of the compact into law by two (2) compacting states.
 22 However, the commission shall become effective for purposes of
 23 adopting uniform standards for, reviewing, and giving approval or
 24 disapproval of products filed with the commission that satisfy
 25 applicable uniform standards only after twenty-six (26) states are
 26 compacting states or, alternatively, by states representing greater
 27 than forty percent (40%) of the premium volume for life insurance,
 28 annuity, disability income, and long term care insurance products,
 29 based on records of the NAIC for the prior year. Thereafter, it
 30 becomes effective and binding as to any other compacting state
 31 upon enactment of the compact into law by that state.

32 (b) Amendments to the compact may be proposed by the
 33 commission for enactment by the compacting states. An
 34 amendment does not become effective and binding upon the
 35 commission and the compacting states unless and until all
 36 compacting states enact the amendment into law.

37 Sec. 15. (a) Once effective, the compact continues in force and
 38 remains binding upon each compacting state. However, a
 39 compacting state may withdraw from the compact by enacting a
 40 statute specifically repealing the statute that enacted the compact
 41 into law.

42 (b) The effective date of withdrawal is the effective date of the

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1 repealing statute. However, the withdrawal does not apply to any
 2 product filings approved or self-certified, or any advertisement of
 3 products, on the date the repealing statute becomes effective,
 4 except by mutual agreement of the commission and the
 5 withdrawing state, unless the approval is rescinded by the
 6 withdrawing state as provided in subsection (e).

7 (c) The commissioner of the withdrawing state shall
 8 immediately notify the management committee in writing upon the
 9 introduction of legislation repealing this compact in the
 10 withdrawing state.

11 (d) The commission shall notify the other compacting states of
 12 the introduction of the legislation within ten (10) days after the
 13 commission's receipt of notice of the introduction of the legislation.

14 (e) The withdrawing state is responsible for all obligations,
 15 duties, and liabilities incurred through the effective date of
 16 withdrawal, including any obligations, the performance of which
 17 extend beyond the effective date of withdrawal, except to the extent
 18 those obligations may have been released or relinquished by
 19 mutual agreement of the commission and the withdrawing state.
 20 The commission's approval of products and advertisement before
 21 the effective date of withdrawal shall continue to be effective and
 22 be given full force and effect in the withdrawing state, unless
 23 formally rescinded by the withdrawing state in the same manner
 24 as provided by the laws of the withdrawing state for the
 25 prospective disapproval of products or advertisement previously
 26 approved under state law.

27 (f) Reinstatement following withdrawal of any compacting state
 28 occurs on the effective date of the withdrawing state reenacting the
 29 compact.

30 Sec. 16. (a) If the commission determines that any compacting
 31 state has at any time defaulted in the performance of any of the
 32 compacting state's obligations or responsibilities under this
 33 compact, the bylaws, or adopted rules or operating procedures,
 34 after notice and hearing as set forth in the bylaws, all rights,
 35 privileges, and benefits conferred by this compact on the defaulting
 36 state shall be suspended from the effective date of default as fixed
 37 by the commission. The grounds for default include:

38 (1) failure of a compacting state to perform its obligations or
 39 responsibilities; or

40 (2) any other grounds designated in commission rules.

41 The commission shall immediately notify the defaulting state in
 42 writing of the defaulting state's suspension pending a cure of the

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1 default. The commission shall stipulate the conditions and the
 2 period within which the defaulting state must cure the defaulting
 3 state's default. If the defaulting state fails to cure the default within
 4 the period specified by the commission, the defaulting state shall be
 5 terminated and the compact and all rights, privileges, and benefits
 6 conferred by this compact shall be terminated on the effective date
 7 of termination.

8 (b) Product approvals by the commission, product
 9 self-certifications, or any advertisement in connection with the
 10 product that is in force on the effective date of termination shall
 11 remain in force in the defaulting state in the same manner as if the
 12 defaulting state had withdrawn voluntarily under section 15 of this
 13 chapter.

14 (c) Reinstatement following termination of any compacting state
 15 requires a reenactment of the compact.

16 Sec. 17. The compact dissolves effective on the date of the
 17 withdrawal or default of the compacting state that reduces
 18 membership in the compact to one (1) compacting state. Upon the
 19 dissolution of this compact, the compact is void and shall be of no
 20 further force or effect, and the business and affairs of the
 21 commission shall be wound up and any surplus funds shall be
 22 distributed in accordance with the bylaws.

23 Sec. 18. The provisions of this compact are severable and if any
 24 phrase, clause, sentence, or provision is considered unenforceable,
 25 the remaining provisions of the compact are enforceable. The
 26 provisions of this compact shall be liberally construed to effectuate
 27 the compact's purposes.

28 Sec. 19. (a) Nothing in this chapter prevents the enforcement of
 29 any other law of a compacting state, except as provided in
 30 subsection (b).

31 (b) For a product approved or certified to the commission, the
 32 rules, uniform standards, and any other requirements of the
 33 commission shall constitute the exclusive provisions applicable to
 34 the content, approval, and certification of the products. For an
 35 advertisement that is subject to the commission's authority, any
 36 rule, uniform standard, or other requirement of the commission
 37 that governs the content of the advertisement constitutes the
 38 exclusive provision that a commissioner may apply to the content
 39 of the advertisement. However, no action taken by the commission
 40 shall abrogate or restrict:

41 (1) the access of any person, including the attorney general, to
 42 state courts;

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1 (2) remedies available under state law related to breach of
 2 contract, tort, or other laws not specifically directed to the
 3 content of the product; or

4 (3) state law relating to the construction of insurance
 5 contracts.

6 (c) All insurance products filed with individual states are
 7 subject to the laws of those states.

8 Sec. 20. (a) All lawful actions of the commission, including all
 9 rules and operating procedures adopted by the commission, are
 10 binding upon the compacting states.

11 (b) All agreements between the commission and the compacting
 12 states are binding in accordance with the terms of the agreements.

13 (c) Upon the request of a party to a conflict over the meaning or
 14 interpretation of commission actions and upon a majority vote of
 15 the compacting states, the commission may issue advisory opinions
 16 regarding the meaning or interpretation in dispute.

17 (d) If any provision of this compact exceeds the constitutional
 18 limits imposed on the legislature of any compacting state, the
 19 obligations, duties, powers, or jurisdiction sought to be conferred
 20 by that provision upon the commission is ineffective as to that
 21 compacting state, and those obligations, duties, powers, or
 22 jurisdiction shall remain in the compacting state and shall be
 23 exercised by the agency of the compacting state to which those
 24 obligations, duties, powers, or jurisdiction are delegated by law in
 25 effect at the time this compact becomes effective.

26 SECTION 2. IC 34-30-2-116.9 IS ADDED TO THE INDIANA
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2003]: Sec. 116.9. IC 27-8-31-6(g)
 29 (Concerning the interstate insurance product regulation
 30 commission).

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